## STATE OF NEVADA

## DEPARTMENT OF EDUCATION

In the Matter of

STUDENT1, by and through his

DECISION OF THE STATE HEARING OFFICER

Parents

Petitioners

VS.

School District,

March 3, 2010 Reno, Nevada

Respondent

Representatives:

Petitioner Attorney

Gregory D. Ivie, Legal Aid Center of Southern Nevada

School District Attorney Phoebe Redmond Esq.

State Hearing Officer
Steven P. Brazelton, Esq.

<sup>&</sup>lt;sup>1</sup> Personally identifiable information is attached as Exhibit "A" to this Decision and must be removed prior to public dissemination. See Letter to Shad (FPCA 12/23/04).

### I. PROCEDURAL BACKGROUND

This action arises under the Individuals with Disabilities in Education Act, as amended ("IDEA"), 20 U.S.C. §1400, et seq., and Chapter 388 of the Nevada Revised Statutes ("NRS") and Nevada Administrative Code ("NAC").

By letter dated June 2, 2009, Student's parents (hereinafter, "Parent(s)") and/or "Petitioner(s)"), requested an impartial due process hearing under the IDEA on behalf of Student. Hearing Officer Exhibits, at H 10-11 [hereinafter, "H \_\_"]. On June 8, 2009, Parents' request was received by the School District and forwarded to the Nevada Department of Education. H 06.

On June 8, 2009, the Nevada Department of Education appointed Steven P. Brazelton as a due process hearing officer, and on June 9, 2009, the Nevada Department of Education sent the parties a letter advising them that the undersigned Hearing Officer was appointed to serve as the Hearing Officer, and advising them of the time-

lines. H 02-04.

On June 15, 2009, the Hearing Officer sent the parties a letter setting forth the applicable timelines, and setting a status conference for June 18, 2009. H 12. On June 18, 2009, the parties held their first pre-hearing status conference, as memorialized in the Hearing Officer's correspondence to the parties dated June 22, 2009. H 15-17.

In the Hearing Officer's June 22, 2009 correspondence, the Hearing Officer memorialized background facts agreed upon by the parties, and restated the issues being asserted by Petitioners. Also in the Hearing Officer's June 22, 2009 correspondence, the Hearing Officer memorialized the School District's objection to the Hearing Officer's restatement of the hearing issues.

On June 26, 2009, a status conference was convened with Petitioners and the School District, as memorialized in the Hearing Officer's correspondence dated June 26, 2009. H 20. Petitioners informed the Hearing Officer that they would be retaining attorney

Gregory Ivie. On June 26, 2009, a letter of representation was received from attorney Gregory Ivie. H 23.

On July 7, 2009, a status conference was convened, as memorialized in the Hearing Officer's correspondence of July 7, 2009. H 24-25. At the status conference, a due process hearing was scheduled for September 28-August 2, 2009.

The pre-hearing conference was convened on September 1, 2009, as memorialized in the Hearing Officer's correspondence dated September 1, 2009. H 35-36. On September 11, 2009, a status conference was convened, as memorialized in the Hearing Officer's Pre-Hearing Order No. 1 dated September 11, 2009. H 41-42. By joint motion of the parties, the due process hearing was re-scheduled for November 4-6, 2009.

On October 23, 2009, a status conference was convened, as memorialized in the Hearing Officer's Pr-Hearing Order No. 2 dated October 26, 2009. H 28-29. By joint motion of the parties, the due process hearing was continued to December 15-17, 2009.

On November 30, 2009, a status conference was convened, as memorialized in the Hearing Officers' correspondence of December 2, 2009. H 48. On December 8, 2009, another status conference was convened, as memorialized in the Hearing Officer's Pre-Hearing Order No. 3 (inadvertently labeled Pre-Hearing Order No. 2). H 51-52. By joint motion of the parties, the due process hearing was re-scheduled for January 27-29, 2010.

On December 16, 2009, Petitioners' counsel sent the Hearing Officer correspondence requesting leave to amend the hearing request to include a prayer for compensatory education. H 56. The School District did not object to this request, and in fact, that relief had already been identified in the pre-hearing conference as having been implied by Petitioners' claim that Student had been denied special education and related services during the 2008-2009 school year. On January 18, 2010, the Hearing Officer confirmed by correspondence that Petitioners' prayer for compensatory education was already included in its

Complaint. H 61. Accordingly, no amendment was needed to the original Complaint.

On January 21, 2010, a status conference was held by telephone, as memorialized in Pre-Hearing Order No. 4. H 67-71. At this status conference, Petitioners further narrowed and defined the two issues of the hearing, as further set forth in the Issues Presented section of this Decision. Petitioners also agreed to withdraw certain individuals from their list of witnesses.

The hearing was held as scheduled from January 27-29, 2010, and because the parties were unable to conclude the hearing in those three days, an additional hearing day was held by agreement of the parties on February 16, 2010. H 80-81.

No objection was made to the presence of the parties' representatives present throughout the hearing with the following exceptions. The School District objected to the recall of Student's Mother at the end of the hearing (Student's mother was the first witness and was present during all other witness testimony).

However, Mother's testimony on recall was extremely limited and the School District elected not to cross examine her on her testimony at recall. Petitioners requested the presence of Dr. Hyatt to serve as a consultant. By agreement of the parties, Dr. Hyatt was excluded from the hearing room until after his testimony and was not subject to recall.

The following witnesses testified at the hearing2.

- 1. Student's Mother
- 2. Paul Webb, PhD, School Psychologist
- 3. Sheri Demott, PhD, School Psychologist
- 4. Special School Principal
- 5. Kenneth Howell, PhD, Petitioner Expert re School Behavior and School Violence
  - 6. Norton Roitman, MD, Psychiatrist
- 7. Keith Hyatt, EdS, Petitioner Expert re special education
  - 8. Sue Daniel, School Psychologist
  - 9. Virtual High School Tutor

 $<sup>^2</sup>$  Personally identifiable information is attached as Exhibit A to this Decision and must be removed prior to public dissemination. See Letter to Shad (FPCA 12/23/04).

- 10. Virtual High School Teacher
- 11. Middle School Disciplinary Dean
- 12. Special Education Teacher

#### II. THE HEARING RECORD

The hearing record consists of four sets of exhibits: (1) Hearing Officer Exhibits ("H 01, et seq.); (2) Petitioner Exhibits ("P 01", et seq.); (3) School District Exhibits ("D 01", et seq); and (4) Joint Exhibits ("J 01", et seq).

The Hearing Officer exhibits consist of correspondence, orders and pleadings generated or received by the hearing officer prior to the hearing<sup>3</sup>, as well as the documents brought to the hearing by the Psychiatrist<sup>4</sup>. The parties reviewed these documents at the hearing and stipulated to their inclusion in the

<sup>&</sup>lt;sup>3</sup> After the hearing, the Hearing Officer discovered that the document marked as H 39-40 was inadvertently included in the hearing officer exhibits by mistake. That document, consisting of research notes of the Hearing Officer, has been withdrawn from the record.

<sup>&</sup>lt;sup>4</sup> Two exhibits were introduced at the hearing by the Psychiatrist, and those documents were by stipulation of the parties included as part of the Hearing Officer exhibits at H 75-78.

record. The proposed hearing officer exhibits were reviewed by the parties at the hearing, and no objection was made to the inclusion of those documents in the record.

At the conclusion of the hearing, the parties discussed the admission of the documents in the Petitioner, School District and Joint exhibit binders. The parties stipulated to withdraw P 53-80 (Petitioner's chronology) and P 137 (duplicated at D 190), and to leave P 166-182 in, but to rely upon the same documents in the School District exhibits at D 135-145 as those documents do not have markings made subsequent to the original creation of the documents.

All District and Joint exhibits were admitted into evidence without objection.

### II. ISSUES

(1) Whether the School District made available the special education and related services to Student within a reasonable time of Student notifying the School District of his intent to re-enroll in the

School District on March 2, 20095.

(2) Whether the educational placement proposed by the School District in the proposed 05/08/09 IEP, an afternoon program at Special School, is a placement in the least restrictive environment for Student.

## III. REQUESTED RELIEF

Petitioners request the following relief in their amended due process hearing request.

- (1) Compensatory education to compensate for special education services not provided in the spring of 2009; and
- (2) Declaration of Student's proper educational placement.

At the conclusion of the Hearing, Petitioners also requested that the Special School Principal Report at P291-292 be expunged from Student's academic record.

### IV. BACKGROUND FACTS

Student is a seventeen year old male who has had a

<sup>&</sup>lt;sup>5</sup> The scope of the claim relating to this issue was clarified with Petitioners during pre-hearing conferences and is memorialized in the pre-hearing orders and correspondence of the Hearing Officer.

challenging history in the school environment. He is currently assessed at a ninth grade academic level. He identifies himself as having Asberger's syndrome, D 71, but Dr. Roitman testified the he likely is properly classified as having obsessive compulsive personality.

As a child, there were some developmental delays and health concerns. P 327. There were also dysfunctional behaviors and difficulty adapting to the school environment which were interpreted as misbehavior. P 327.

Mother testified that in third grade Student was repeatedly "RPC'd" (referred for parent conference) for behavioral issues, but no one thought to assess Student for a disability. Student was home-schooled for 5<sup>th</sup> grade.

From fall 2005 through April 2007, Student attended sixth and seventh grade at Middle School. Student had difficulty getting along with his peers, and was disciplined numerous times for fighting and verbal altercations with his peers. D 131. Student complained to his Mother and to his Middle School that he was

being harassed and bullied at school.

The School District incident reports indicate that Student was often targeted for bullying at Middle School, and that on occasion Student also provoked his peers into conflict with him. These altercations occurred in the regular classroom, the SEC classroom, and in other areas such as hallways and lunchrooms.

On December 5, 2005, Student was referred for evaluation for special education academic concerns including "reading difficulties, math difficulties and writing", and behavioral concerns including "off-task, passive resistance, withdrawal, general behavioral problems, and social skills". J 127. The "areas of suspected disability were emotionally disturbed and autism." J 127

On April 28, 2006, a multi-disciplinary team

("MDT") evaluation report was issued and Student was

declared eligible for special education under the

disability category of "serious emotional disturbance."

D 21. On the same date, an IEP was prepared for

Student.

The April 28, 2006 IEP provided that Student would spend 50% of his time in the general education environment and 50% of his time in a self contained "SEC" (specialized emotionally challenged) program on the Middle School campus. J 17. Student was to attend science and non-core classes in the general education environment. J 13.

The justification for this placement was the IEP team consensus that "[Student] requires a small group setting with consistent feedback, redirection, and reteaching . . . [with] frequent prompts, monitoring, modeling and verbal/nonverbal cues." J 17. Student's Mother signed in agreement with this IEP. In conjunction with the IEP, a behavior plan was prepared, providing for peer negotiation skills, anger management skills, emotion identification and communication skills, and decision making skills. J 18. A functional behavioral assessment was completed on the same date. J 20.

On May 26, 2006, another IEP meeting was convened to address Student's behavioral problems, which

included "verbal altercations, classroom disruptions and fighting", as well as "threatening to kill other students, then kill himself." J 23. Student's SEC teachers reported that Student was performing well academically in the SEC room, but Student's general education science teacher reported that Student was disruptive in class with respect to his peers, and that Student "perceives that they want to mess with him." J 22.

With respect to Student's threats, a manifestation determination concluded on May 25, 2006 that the behavior was indeed a manifestation of Student's disability, and so Student's recommended expulsion was not carried out. J 24. Concurrently, a threat assessment was conducted by Dr. Webb to evaluate the seriousness of Student's threat. D 77, et seq. Dr. Webb concluded that "there is some risk that [Student] may try to harm [the pupil reportedly harassing Student] or another student who bullies him . . ." D 78.

As a result of the May 2006 IEP meeting, Student's placement in the regular education environment was

reduced to 17% (eliminating his participation in non-core classes). J 28. Student's behavioral plan was modified to include "strategies to deal with anger and frustration in a nonviolent manner." J 30.

The May 2006 IEP also provided for strict control of Student outside of the SEC classroom. Upon arrival each morning, Student was escorted to the main office, where he was searched for weapons. J 27. Student was also escorted throughout the day when outside the SEC classroom. J 27.

On October 26, 2006, Student was involved in a fight inside the SEC classroom. D 250; D 131-134. This incident marked the second time that Student stabbed another pupil with a pen. J 137. On this occasion Student was acting in self-defense. D 141; D 255. Middle School again recommended expulsion, but Student's behavior was again determined to be a manifestation of his disability. D 133; J 34.

An IEP meeting was convened on November 6, 2006. Student was temporarily removed for several weeks from the general education environment. J 38. Student's

Mother signed this IEP in agreement. J 38.

In November and December 2006, Student was observed to be engaging in self-destructive behavior (scratching arm). D 142.

On November 14, 2006, Middle School requested "technical assistance" from the Special School Principal (at that time the vice principal) to identify additional behavioral interventions and to identify the "most appropriate (LRE) placement . . ." D 62.

On January 17, 2007, Student reported to Middle School Dean that Student was being harassed by another pupil. D 141, D 145. The Dean reported he was unable to confirm the harassment. D 145.

On March 13-14, 2007, Special School Principal observed Student in the SEC classroom and reviewed Student's confidential record. D 07; D 70-71. Special School Principal noted concerns with "minimal data, lack of documentation on interventions and no behavior plan for 06-07 school year." D 07. She also made notes regarding her observation of Student. D 70-71.

On April 12, 2007, Special School Principal issued

a report, recommending "a small school setting." D 71.
On April 25, 2007, an annual IEP meeting was convened
to review Student's IEP. J 39-57. The School District
IEP team members proposed changing Student's placement
to the Special School. Student's Mother signed the
proposed IEP in disagreement. J 57. Student's Mother
was concerned that the proposed Special School "will
result in increased taunting and potential conflict." P
319. Student's Mother expressed the desire for Student
"to attend a charter school that will enable him to
focus on his special interests [and] have fewer
negative peers". P 319.

After the April 2007 IEP meeting, Student's Mother withdrew Student from the School District and began home-schooling Student. On July 3, 2007, Student was assessed by a psychologist, Randall Stiles. P 314-320. Dr. Stiles assessed Student with "Compulsive and Schizoid Traits." P 320. He did not recommend counseling unless "[Student] expresses interest". He did recommend "[s]chool and community activities that are of interest to [Student] . . . to help him practice

social skills and relieve anxiety." P 320.

For some time in 2008-2009, Student saw a psychiatrist, Dr. Fontanillas, and a counselor. D 257; D 45-46; D 113. Student refuses to take the medication recommended by Dr. Fontanillas. During this time he also participated in a junior military community program known as the Sea Cadets. Student's Mother reports Student enjoys and has done well in the Sea Cadets program. Student likes the disciplined and controlled military environment of the Sea Cadets.

Student had no contact again with the School
District until March 2, 2009, when Student's Mother
requested that Student be reevaluated and placed into a
"regular IEP setting." D 257-258. Throughout March and
April 2009, Student was evaluated by the School
District. Student's Mother granted the MDT team access
to the psychiatrist, but not the counselor or Sea
Cadets.

An MDT multi-disciplinary team "MDT" reevaluation was completed for Student on May 8, 2009. J 141-150. Student was determined eligible for special education

under the category of emotionally disturbed. J 148. The MDT recommended a placement with "high structure and constant monitoring as this student's atypical presentation and ideology may not be accepted by others." J 149.

An IEP meeting was convened on May 8, 2009. J 58-79A. The IEP Team, with the exception of Student's Mother, recommended placement at Special School. J 75. Student's Mother signed the IEP in disagreement and on June 2, 2009, requested a due process hearing to challenge the proposed placement of Student at Special School.

Student requested special education and related services on March 2, 2009. The School District offered to provide Student services as of May 8, 2009. However, because of the dispute over placement, Student did not receive services until September 2009, when Student enrolled in Virtual High School and began receiving tutoring services.

Student's Mother retained an attorney to represent her and Student in the due process hearing in June

2009, and through the attorney, Student's Mother agreed to have Student independently evaluated by Dr. Roitman. H 23. Dr. Roitman issued two reports. P 325-330; P 342-344. A second threat assessment was also conducted by Dr. Webb. D 111, et seq. Dr. Webb concluded that Student "poses [no] risk for targeted violence at this time . . .", but that there remains a risk of violence if Student were bullied, harassed or perceived himself to be. D 118.

Following these additional evaluations, another IEP meeting was convened on December 10, 2009. J 80-126. The IEP team, with the exception of Student's Mother, again recommended placement at the Special School. J 108.

#### V. APPLICABLE LAW

# A. The Timely Provision of FAPE during the 2008-2009 School Year

Students with disabilities have the right to a "free and appropriate public education" ("FAPE"). 20 U.S.C. \$1412(a)(1)(A). FAPE means special education and related services that are available to the student at

no charge to the parent or guardian, that meet the State educational standards, and conform to the Student's IEP. 20 U.S.C. §1401(9); 34 C.F.R. §300.17; NAC §388.101.

"Special education" means "instruction designed to meet the unique needs of a pupil . . . in a classroom . . or other setting . . . includes . . . speech and language services, travel training and vocational education if these services are specifically designed for instruction of the particular pupil to meet the needs of the pupil." NAC 388.115; 34 C.F.R. 300.39.

"Related services" are defined, in relevant part, to mean developmental, corrective and other supportive services as are required to assist a child to benefit from special education. 34 C.F.R. §300.34; NAC § 388.101.

A Student who withdraws from public school and is temporarily home-schooled retains his eligibility for special education and related services. Letter to Goldman, 53 IDELR 97 (March 26, 2009). When that child re-enrolls in the public school, the local educational

agency must convene an IEP meeting and develop an appropriate IEP, and conduct a reevaluation if warranted or if it has been more than three years since the last evaluation. *Id*.

# B. Placement in the Least Restrictive Environment

Students receiving special education services under the IDEA are to receive their education in the "least restrictive environment" ("LRE") under the IDEA. 20 U.S.C. \$1412(5)(A). The LRE means that "to the maximum extent appropriate, children with disabilities . . . are educated with children who are nondisabled." 34 C.F.R. \$300.114(a)(2)(i).

Further, "[s]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment" is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. §300.114(a)(2)(ii). See also Nevada Administrative Code ("NAC") 388.245.

In Sacramento City Unif. Sch. Dist. V. Rachel H.,

the Ninth Circuit adopted a four part test to determine whether a proposed placement is the LRE: (1) the educational benefits to the student in the less restrictive placement, supplemented with appropriate aids and services, as opposed to the more restrictive environment; (2) the non-academic benefits of interaction with children who are not disabled; (3) the effect of the student on the teacher and other children in the less restrictive environment; and (4) the costs of the less restrictive environment. 14 F.3d 1398, 1400-1401 (9th Cir. 1994). The Ninth Circuit subsequently applied this four prong test in Clyde K. v. Puyallup Sch. Dist., 35 F.3d 1396 (9th Cir. 1994) and Seattle Sch. Dist. V. B.S., 82 F.3d 1493 (9th Cir. 1996).

Among the two placements at issue, an SEC classroom at a comprehensive high school campus, versus a special school, the special school is considered the more restrictive placement. NAC 388.245(2).

In ascertaining whether the placement proposed by a school district is appropriate, the Hearing Officer is to judge whether the proposed change in placement was

reasonable under the circumstances at the time it was proposed by the School District. Adams v. Oregon, 195 F.3d 1141, 1149(9<sup>th</sup> Cir. 1999). The parties jointly moved to continue the hearing in this matter and agreed upon additional evaluations of Student. Moreover, the reports of those evaluations were taken into evidence at the Hearing without objection. Accordingly, the Hearing Officer has considered those evaluations.

# C. <u>Burden of Proof at Hearing</u>

As the party requesting the hearing, Petitioners bear the burden of proving their claims by a preponderance of evidence. Schaffer v. Weast, 546 U.S. 49 (2005).

## D. Relief

When a local educational agency fails to provide FAPE, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA.

School Committee of the Town of Burlington v. Dept. of Ed., 471 U.S. 359, 374 (1996).

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## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

# A. The Timely Provision of FAPE during the 2008-2009 School Year

At issue is the timing of the special education and related services offered by the School District in the spring of 2009. Student requested services on March 2, 2009 and was offered services on May 8, 2009 upon completion of the MDT Report and proposed IEP.

Petitioner claims that by mid-March, Student should have been placed into the last agreed upon IEP placement, an SEC classroom at a comprehensive school campus with an escort. However, under the circumstances, the School District was obligated to reevaluate and develop a new IEP for Student, and the Hearing Officer concludes it did so within a reasonable time.

By analogy, a school district would have 60 calendar days to evaluate a student for special education eligibility and thereafter, 30 calendar days to develop an IEP. 34 C.F.R. §§ 300.301((c)(1)(i), 300.323(c)(1). These sections are more analogous than

NAC 388.263, which deals with students who transfer between school districts, because student had not been enrolled in any school district for two years.

The record indicates that the School District was not dilatory in evaluating and offering special education and related services to Student. A number of assessments were completed by March 20, 2009. D 34. According to Ms. Daniel, Student's Mother took some time to return a behavioral questionnaire, and Dr. Fontinallas' records (Student's private psychiatrist) were not provided to the School District until April 28, 2009. D 45.

In summary, the School District's offer of services on May 8, 2009 after Student began a re-enrollment process on March 2, 2009 was not dilatory and therefore did not deny FAPE to Student<sup>6</sup>. Accordingly, Student is

<sup>&</sup>lt;sup>6</sup> The record indicates that Student did not actually enroll in the School District until September 2009. While this would indicate that Student was not eligible for services under an IEP until his actual enrollment in the School District in September 2009, the School District has not made that argument. Accordingly, the Hearing Officer has analyzed whether the School District timely offered services after

not entitled to compensatory education.

# B. Placement in the Least Restrictive Environment

The record indicates that the special education and related services contained in the May 8, 2009 proposed IEP could be provided in an SEC classroom on a comprehensive school campus. While this may be true, it begs the question of whether the delivery of special education and related services in the SEC classroom would be consistent with the considerations set forth in the Rachel H. case. Those considerations determine the appropriateness of the placement.

As of April 2007, Student was making meaningful academic progress, as reported by his teachers. J 40.

As indicated by the lack of disciplinary referrals,

Student was also avoiding physical aggression.

However, the record indicates that Student was avoiding peer conflict by isolating himself from his peers. D 41 ("[Student] gets anxious when other students are around him. He does not like when other students do not follow

Student's mother requested placement of Student on March 2, 2009.

the rules and will become increasingly agitated if the other students do not settle down quickly. [Student] prefers to sit alone in the classroom. He will participate in small groups, but not for long periods of time. He prefers to complete assignments independently."). Dr. Stiles July 2007 psychological assessment of Student referenced Student's "aversion to social interaction" and his "rejection and isolation from peers." P 317.

Did Student's anxiety around and isolation from his peers in the spring of 2007 justify the proposed change in placement in April 2007? The Hearing Officer makes no finding in this regard because whether the School District's proposal to change Student's placement to the Special School in April 2007 was appropriate under the IDEA and whether the School District had provided FAPE to Student in 2006-2007 is not before the Hearing Officer. What is before the Hearing Officer is the appropriate placement for Student as of May 2009 and at this time.

The cost of the two possible placements for Student

is not an issue in this case, as acknowledged by the School District. However, the other three Rachel H. prongs are very salient. The academic and non-academic benefits of the SEC versus the Special School placement, as well as the effect of Student's placement upon his teachers and fellow pupils are difficult to separate out because they all revolve around Student's interactions with his peers, authority figures and his physical and social environment. Therefore, they are addressed together.

The Hearing Officer accords great weight to the reports and testimony of Dr. Roitman. He is an experienced and well-regarded psychiatrist who was entrusted by both parties to conduct an independent evaluation of Student. While this independent psychiatrist would not recommend a specific placement over another, he did make a number of recommendations regarding the type of placement best suited to address Student's unique needs and those recommendations have been of assistance in the Hearing Officer's application of the Rachel H. factors to this case.

Although Dr. Stiles did not testify, his July 2007 report is consistent with Dr. Roitman, it appears to have been obtained solely for its recommendations, and as such, the Hearing Officer also accords it much weight. The Hearing Officer also relies on the objective cognitive and psychological assessments performed and reported in the MDT report of May 8, 2009, at J 141-150, especially given that those assessments are consistent with those of Drs. Stiles and Roitman.

To identify the appropriate learning environment for Student, one should start with an understanding of Student and his unique needs. NAC 388.215 ( ". . . every pupil with a disability who resides within the school district is identified, evaluated and served in the manner appropriate to the unique needs of the pupil.")

Student was generally described by a number of witnesses at the Hearing as respectful and intelligent. While he may question authority, he is interested in learning. He is an avid reader with a keen interest in

world religions and history. In an appropriate environment and provided the supports he needs, Student "should be able to access and progress when working with the general education curriculum." J 41. The problem has been Student's anxiety around, isolation from, and/or conflicts with his peers - this challenge has caused disruptions in his access to the general education curriculum.

Student has an obsessive compulsive personality and an adjustment disorder with disturbance of behavior, mood and anxiety, as well as oddities of behavior, social pressure, rigidity and inflexibility. D 125.

Student has developed his own unique ideology which intertwines various world religions and world history. Student entertains aspirations of pursuing a post-secondary education, military career and an he envisions an international political leadership role for himself.

Student speaks and dresses in an atypical manner. He likes to share his atypical ideology with others. Student's atypical presentation and thought processes

make him a target in a school environment for ridicule and harassment. Indeed, Student has suffered a history of bullying at school.

Student "displays unique interests and mannerisms which are ridiculed by peers and undoubtedly cause him some anxiety as expressed by his heightened vigilance in social situations." P 319. While Student is "obedient and deferential to authority figures, he may appear self-righteous and haughty to peers, inviting the type of ridicule that fuel his conforming and self-righteous defenses in a vicious circle." P 317. He "is a loner, fears going to school, worries about the future, overly concerned about what others think of him, and seems sad sometimes." J 143.

Student "is inclined toward self-blame and self-punishment." P 317. He exhibits "excessive neatness and perfectionistic tendencies." P 318. Student "displays [an] anxious conformity to the expectations of authority figures" and his "[o]bsessive concern with minor irrelevancies distracts his attention from feelings of shame, inadequacy and guilt." P 317

Student's self doubt leads to social withdrawal. P 317.

Student's social history in the school environment was one of "increasing separation and isolation from his peers", as well as victimization and inappropriate retaliation, an and also self-injury. D 122. Student's manner is characterized by "rigidity, repetitions, inflexibility, dichotomous thinking and poor ability to adapt . . ." D 123. Despite his isolation, Student would like to make friends with his peers.

Student is suspicious, defensive and guarded, and while he knows he is atypical, he lacks insight into his condition. D 123. Student suffers from anxiety, and thinks others should conform to his expectations.

Despite his history, he does not think he needs protection from bullying. D 123. Student's obsessions distort his thinking. D 126.

As articulated by Dr. Roitman, "[u]nderstanding [Student] is the key to adaptation at home and an school." D 126. When Student feels threatened, his tensions build up and lead to his inappropriate acting out against his peers. D 126. Correcting these

behaviors makes the situation worse for Student. D 126. Likewise, when Student feels safe, he is amiable, compliant and eager to learn, as testified to by his Virtual High School Tutor.

What Student needs principally "is some kind of safety valve to release his tensions while efforts are made to make him feel safe." D 126. Student needs "some authorized way to signal a release" and he needs protection from bullying. D 126. He needs a lot of input into his plan, and involvement in self-monitoring. D 127. He should be kept from the "peers that he fears and large groups of people until he has developed better anxiety control." D 127.

The environment for Student should "decrease contact with provocative peers [and] provide adult supervision." D 128. Student should be in classroom with students "who share characteristics of inhibition, over-controlled and internalizing behaviors." D 129. Student's curriculum should be individualized for him, and Student should have regular access to the school principal. D 129.

Although Student is interested in making friends, "the stringency at school is unlikely to foster many socializing opportunities." D 130. His educational plan should include community activities that are "adult supervised, provide structure, order and include respect for feelings and emotions." D 130.

In choosing the right environment for Student's education, "it is the specific characteristics of peers and school personnel that is most critical." D 130.

Student will not "benefit from competitive peers or authorities", nor exposure to "situations that cause him the anxiety reactions that trigger his defensive aggression." D 130.

While Student is unlikely to act out aggressively unless he perceives he his being harassed, Dr. Roitman recommended at the Hearing that the safety concerns expressed by school officials should be taken into account as they in turn influence how Student perceives the school environment.

The afternoon program at the Special School is better suited to implement the recommendations of Dr.

Roitman. It will provide Student a better opportunity to adapt socially.

At the Special School, Student could be provided regular access to the school principal to express his concerns; this access would not be practical on a large comprehensive high school campus. The typical peers described by Sue Daniels at the afternoon program of the Special School are more like those described as desirable by Dr. Roitman than the typical peers found in the SEC classroom. Many of the students who attend the afternoon program of the Special School are inhibited and internalizing their emotions, while many of the students who are in the SEC classroom are externalizing their emotions and acting out. Because of its smaller class sizes, lower student-teacher ratio, and focus on individual attention, the Special School can provide the more intense adult supervision and individualized attention prescribed by Dr. Roitman. The Special School is also designed to encourage and support Student's involvement in the community activities identified as likely helpful by Dr. Roitman.

Moreover, a comprehensive campus would present Student with the large groups of students Dr. Roitman recommends be avoided at this time for Student.

Student's isolation in the SEC classroom in the spring of 2007 minimized the risk of Student's physical aggression to protect himself from physical and psychological harassment. However, improving Student's ability to interact with his peers is a key educational goal for him, and the Special School is the better environment, at least initially, to work with Student towards that goal.

The safety concerns of school personnel, as Dr.

Roitman testified, should be taken into account as
they will influence Student's perceptions of school
authority. The greater supervision available at the
Special School will better prevent the types of
situations which led to Student's physical aggression
and conflicts in the past, as well as his mistrust of
the authority structure in the school environment.

As Dr. Roitman testified, Student's environment and support plan should be reviewed regularly, with input

from Student. The goal should be to move Student back to a comprehensive campus as soon as practical.

### VII. ORDER

For the reasons set forth in this Decision, the
Hearing Officer finds that Student has not been denied
FAPE because he was offered special education and
related services within a reasonable time of
communicating his intent to re-enroll in the School
District, and the placement proposed by the School
District was appropriate given Student's unique needs.
Accordingly, all relief sought by Petitioner is denied
by the Hearing Officer.

## VIII. NOTICE OF APPEAL RIGHTS

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this Decision pursuant to NAC 388.315. A party to the

hearing may file a cross-appeal within ten (10) days after receiving notice of the initial appeal. NAC 388.315.

Dated this 3<sup>rd</sup> day of March, 2010

Steven P. Brazelton, State Hearing Officer

### CERTIFICATE OF SERVICE

Pursuant to Nevada Administrative Code section 388.310(11), I certify that on the 3<sup>rd</sup> day of March, 2010, I sent a copy of the Hearing Decision to the parties via e-mail and regular U.S. mail, addressed as follows:

For the Petitioners:
Gregory Ivie, Esq.
Legal Aid Center of So. Nev.
Las Vegas, NV 89101

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For the Clark County School District Phoebe Redmond Clark County School District 2832 East Flamingo Road Las Vegas, Nevada 89121

Steven P Brazelton